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Patent  
43521-1900REMARKS

The following remarks are prepared in response to the Office Action of April 25, 2006. Claims 1, 3, 5-15 are pending in this application, after entry of this amendment. Claims 14 and 15 have been added, while claims 2 and 4 have been cancelled. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

The present invention provides a device for measuring in the subject's brain a person's strategy acquisition of a work project in which the person expresses a tendency or characteristic in the brain as scientific data by analyzing the amount of oxyHb in the person's blood at a predetermined region of the person's brain that causes the characteristic change when a person acquires strategy to solve the work project.

The Office Action contends that a *Hashi et al.* reference (Near-Infrared Optical Detection of Sequential Brain Activation in the Prefrontal Cortex during Mental Tasks) is capable of anticipating Claims 1-8 and 10-13 of the present invention.

Applicant respectfully traverses this contention.

The present invention comprises (i) an average value data producing portion that calculates an average value of the oxyHb amount on each work project when the person performs multiple work projects that can be solved using a definite law or regularity, and produces average value data indicating the average value of the oxyHb amount for each work project, and (ii) an output portion that displays or prints out the average value data produced by the average data producing portion. Accordingly, the present invention makes it possible to determine, in the form of objective scientific data, the timing in which the person acquires a measurable strategy to enable the work project.

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Furthermore, the present invention makes it possible to determine whether the person can acquire strategy or not by analyzing the change in the oxyHb amount when the person solves the work project. For example, the present invention makes it possible to objectively determine the point in time when the average value of the oxyHb amount changes from increasing to a constant state or decreasing. This change has been determined to correspond to the timing moment of acquiring strategy when the output portion outputs an average value of the oxyHb amount obtained by the average value data producing portion.

In contrast, the *Hoshi* reference discloses a device for measuring an oxyHb amount and a deoxyHb amount by near-infrared spectroscopy, and for determining a degree of completion of tasks based on diachronic changes in the amount of oxyHb and deoxyHb. The *Hoshi* reference does not teach, disclose or suggest "an average data producing portion that calculates average values of the oxyHb amount on each work and produces average value data indicating an average value of the oxyHb amount while the subject conducts each work based on the time change data produced by the time change data producing portion in case the subject conducts multiple works that can be solved using a definite law or regularity."

Accordingly, Applicant submits that amended Claim 1 is patentably distinct over the *Hoshi* reference and the rejection under 35 U.S.C. §102(b) should be withdrawn.

Claims 3, 5-8, and 10-12 depend from Claim 1 and these claims are patentably distinct from the *Hoshi* reference for the same reasons advanced above with respect to Claim 1. Moreover, independent Claims 13, 14 and 15 are also patentably distinct from the *Hoshi* reference for the same reasons advanced above with respect to Claim 1.

The Office Action rejected Claim 9 under 35 U.S.C. §103(a) as being unpatentable over the *Hoshi* reference in view of *Barker* (U.S. Patent Appl. No. 2004/0100618).

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Applicant respectfully traverses.

As noted in the cited MPEP §2141 (pg. 2100-120):

When applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

*Hodash v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, U.S.P.Q 187 n.5 (Fed. Cir. 1986). (Emphasis added.)

We have already demonstrated the inadequacies of teaching the present invention in the *Hoshi* disclosure and under 35 U.S.C. §103, it is incumbent upon the teaching in the *Barker* reference to provide a teaching reference for supplementing the above deficiencies found in the *Hoshi* disclosure.

The *Barker* reference, however, merely discloses the use of a head restraint to avoid undesired movements of a head portion by fixing the head portion during an experiment. The reference does not disclose, teach or suggest the deficiencies of the *Hoshi* disclosure as defined in our current claims and certainly does not teach our claimed apparatus and method relating to determining an average value of deoxyHb on each work assignment and determining the timing at which the subject acquires the strategy to perform the work task. The new Claims 14 and 15 provide an alternative definition of these claimed features which likewise distinguish over the

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cited art. As can be appreciated, the measurement of blood quantity by "moles" is only an example of measurement units.

Applicant accordingly submits that the present invention is more than adequately distinguished over any combination of the references of record by the presently pending claims, and is worthy of patent protection.

In view of the amendment to the claims, it is believed the case is now in condition for allowance and early notification of the same is requested.

If the Examiner believes a telephone interview will assist in the prosecution of this application, the undersigned attorney can be contacted at the listed phone number.

I hereby certify that this correspondence is being transmitted via facsimile to the USPTO at 571-273-8300 on August 24, 2006.

Very truly yours,

SNELL & WILMER L.L.P.

By: Sharon Farnus

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